

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion, I must dismiss his current action without prejudice.¹

A separate Final Order will be entered herewith.

ENTER: February 10, 2006

/s/ JAMES P. JONES
Chief United States District Judge

¹ Court records indicate that this action is also untimely filed, pursuant to § 2255 para. 6, and without merit, because it relies on *United States v. Booker*, 543 U.S. 220 (2005), a decision that does not apply retroactively to cases on collateral review. *See United States v. Morris*, 429 F.3d 65, 72 (4th Cir. 2005) (finding that *Booker* does not apply retroactively to cases that became final before issuance of the decision); *United States v. Cruz*, 423 F.3d 1119, 1121 (9th Cir. 2005) (citing other cases holding *Booker* not to be retroactive).